



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R08-UST-2018-0169; FRL-9982-18-Region 8]

Utah: Final Approval of State Underground Storage Tank Program Revisions, Codification and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Utah's Underground Storage Tank (UST) program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of Utah's state program and incorporates by reference those provisions of the State's regulations that we have determined meet the requirements for approval. The State's federally-authorized and codified UST program, as revised pursuant to this action, will remain subject to the EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the

Federal Register, as of **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Email: langenfeld.matthew@epa.gov.
3. Mail: Matthew Langenfeld, Region 8, Project Officer, UST, Solid Waste and PCB Unit, Resource Conservation and Recovery Program, Office of Partnerships and Regulatory Assistance (8P-R), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
4. Hand Delivery or Courier: Deliver your comments to Matthew Langenfeld, Region 8, Project Officer, UST, Solid Waste and PCB Unit, Resource Conservation and Recovery Program, Office of Partnerships and Regulatory Assistance (8P-R), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

Instructions: Direct your comments to Docket ID No. EPA-R08-UST-2018-0169. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or email. The federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your email address will

be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this action and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, phone number (303) 312-6284. Interested persons wanting to examine these documents should make an appointment with the office at least 2 days in advance.

FOR FURTHER INFORMATION CONTACT: Matthew Langenfeld, (303) 312-6284, Langenfeld.matthew@epa.gov. To inspect the hard copy materials, please schedule an appointment with Matthew Langenfeld at (303) 312-6284.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Utah's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the federal underground storage tank program. When the EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to

the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this rule?

On February 28, 2018, in accordance with 40 CFR 281.51(a), Utah submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Utah's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the State Application and determined that the revisions to Utah's UST program are equivalent to, consistent with, and no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281, and that the Utah program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Utah final approval to operate its UST program with the changes described in the program revision application, and as outlined below in Section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because

the regulations being approved by this rule are already in effect in the State of Utah, and are not changed by this action. This action merely approves the existing state regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. Utah did not receive any comments during its comment period when the rules and regulations being considered today were proposed at the state level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the “Proposed Rules” section of this Federal Register that serves as the proposal to approve the State’s UST program revisions, and provides an opportunity for public comment. If EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Utah previously been approved?

On April 7, 1995, the EPA finalized a rule approving the UST program that Utah proposed to administer in lieu of the federal UST program. On December 5, 1995, the EPA codified the provisions of the approved Utah program that are part of the underground storage tank program under subtitle I of RCRA, and therefore are subject to the EPA’s inspection and

enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR Subpart B (Components of a Program Application); Subpart C (Criteria for No Less Stringent); and Subpart D (Adequate Enforcement of Compliance). This also is true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the federal UST program and because the EPA has confirmed that the Utah UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, Subpart D after this approval.

The Utah Department of Environmental Quality (DEQ), Division of Environmental Response and Remediation (DERR) is the lead implementing agency for the UST program in Utah, except in Indian country.

The DERR continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under Utah Statutes (2018), Title 19, Chapter 6, Part 4 - Underground Storage Tank Act, Sections 401 – 429. The Utah UST Program gets its enforcement authority from the powers and duties of the DERR Director (Director) found in Title 19, Chapter 6, Part 4, Sections 404(f), 404(j) and 425(2). Under Title 19, Chapter 6, Part 4, Section 404(k) the Director is authorized to require an owner

to furnish records, conduct monitoring or testing, and provide access to tanks. The Director is authorized to issue a Notice of Intent to Revoke and Order to Revoke Certificates of Compliance under Title 19, Chapter 6, Part 4, Section 414. Certificates of Compliance lapse automatically if annual registration fees are not paid under Title 19, Chapter 6, Part 4, Section 408(5)(c). Penalties for non-compliance with Utah's UST Act may be assessed under Title 19, Chapter 6, Part 4, Section 425(1). A delivery prohibition tag may be placed on a tank for failure to have a certificate of compliance, spill and overfill prevention, and required tank and/or piping leak detection or corrosion protection.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases are found under Utah Administrative Code (UAC), as amended effective January 1, 2017, R311-200 through R311-212, Underground Storage Tanks; Reporting and recordkeeping requirements are found under UAC R311-202-280.34; Environmental Quality Administrative Rules are found under UAC, as amended February 1, 2018, R305-1 through R305-9; and maintenance and management of records for individual sites and projects is required under Utah Statutes (2008), Title 63G, Chapter 2, Part 1 through Part 9. The aforementioned statutory sections and regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Utah and the EPA, effective June 27, 2017, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42 including the provision that the State will not oppose intervention under Rule 24(a)(2) of the Utah Rules of Civil Procedure on the grounds that the applicant's interest is adequately represented by the State. Utah has met the public

participation requirements found in 40 CFR 281.42.

To qualify for final approval, revisions to a state's program must be "equivalent to, consistent with, and no less stringent" than the 2015 Federal Revisions. In the 2015 Federal Revisions the EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things, new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved state programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The DERR has revised its regulations to help ensure that the State's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the DERR has amended Utah Administrative Code R311-202-1 to incorporate by reference (into the Utah regulations) the requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions, except for 40 CFR Subpart J (Operator Training) and the definitions of Class A, B and C operators. (We note that R311-206-2(a)(2) also incorporates by reference the necessary requirements for financial responsibility for UST systems.) The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the state operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than federal requirements. Utah did not incorporate by reference federal requirements for operator training, and has promulgated and is implementing its own operator training provisions under Utah

Administrative Code R311-201-12. After a thorough review, the EPA has determined that Utah's operator training requirements are equivalent to, consistent with, and no less stringent than federal requirements.

As part of the State Application the Utah Attorney General certified that the State revisions meet the requirements "equivalent to, consistent with, and no less stringent" criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

For further information on the EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for this rulemaking.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program and are not federally enforceable. (40 CFR 281.12(a)(3)(ii)) The following statutory and regulatory requirements are considered broader in coverage than the federal program as these state-only regulations are not required by federal regulation and are implemented by the State in addition to the federally approved program:

Utah Administrative Code R311-206-2(a)(1) and (b) allows owners and operators, meeting requirements for participation, to use the State-only Environmental Assurance Program to demonstrate financial assurance.

Under Utah Statutes, Title 19, Chapter 6, Part 4 - Underground Storage Tank Act, Section 412(6), certificates of compliance are required to operate regulated UST systems and are

issued by the State for facilities that are registered, have financial assurance, comply with federal and state rules, and meet tank testing requirements. Under Utah Statutes, Title 19, Chapter 6, Part 4 - Underground Storage Tank Act, Section 411(7), the DERR Director shall issue certificates of compliance and the Waste Management and Radiation Control Board shall make rules for identifying USTs that do not qualify for a certificate of compliance.

Under Utah Administrative Code R311-201-2, Utah requires that UST consultants, inspectors, testers, installers, removers, and groundwater and soil samplers be certified by the State. Under Utah Administrative Code R311-201-2, Utah allows individuals to apply for certification, and under Utah Administrative Code R311-201-4, Utah lists eligibility requirements for certification of UST consultants, inspectors, testers, and installers. Under Utah Administrative Code R311-203-3, Utah requires certified installers to pay a permit fee for installation at facilities that do not qualify for a certificate of compliance and to notify the DERR Director of the completion of installation. Under Utah Administrative Code R311-201-5 through 10, Utah allows for renewal of certificates, provides standards of performance, gives the DERR Director the ability to deny certification, and allows for appeal, inactivation, revocation, and reciprocity.

Under Utah Administrative Code R311-203-3, Utah requires installers to provide notification to the State 10 days prior to installation of UST systems and components, and requires an UST installation permit fee. Under Utah Administrative Code R311-203-4, Utah requires UST registration fees.

More Stringent Provisions

Where an approved state program includes requirements that are considered more stringent than required by federal law, the more stringent requirements become part of the federally approved program. (40 CFR 281.12(a)(3)(ii))

The following statutory and regulatory requirements are considered more stringent than the federal program, and on approval, they become part of the federally approved program and are federally enforceable:

Under Utah Administrative Code R311-201-12(f), Utah requires third-party Class B operators to be certified as UST testers, installers, or meet the requirements of certified UST inspectors. Under Utah Administrative Code R311-203-5, Utah requires that UST testers report test results. Under Utah Administrative Code R311-203-7(a), Utah requires that walkthrough inspections conducted under 40 CFR 280.36 be conducted by or under the direction of a Class B Operator. Under Utah Administrative Code R311-203-7(c), Utah requires UST facilities with temporarily closed tanks to conduct annual operator inspections. Under Utah Administrative Code R311-211-12(h)(2) and (3), Utah requires Class A and B operators to submit a registration application to the DERR Director, documenting proper training with its renewal registration application prior to expiration of their existing certification.

I. How does this action affect Indian country (18 U.S.C. 1151) in Utah?

The EPA's approval of Utah's Program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within Utah: the Washakie Reservation (Northwestern Band of the Shoshone Nation), reservation lands of the Paiute Indian Tribe of Utah (Cedar Band

of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah & Ouray Reservation, the Goshute Reservation, and the Navajo Nation; any land held in trust by the United States for an Indian tribe; and any other areas that are “Indian country” within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by federal court action are not considered reservation lands even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a state’s statutes and regulations that comprise the state’s approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public’s ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Utah’s UST program?

The EPA incorporated by reference and codified Utah's then-approved UST program in 40 CFR 282.94, effective April 7, 1995 (60 FR 12709; March 8, 1995). Through this action, the EPA is incorporating by reference and codifying Utah's state program in 40 CFR 282.94 to include the approved revisions.

C. What codification decisions have we made in this rule?

In this rule, we are finalizing the federal regulatory text that incorporates by reference the federally authorized Utah UST Program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Utah rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 8 office (see the **ADDRESSES** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Utah's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the Utah UST program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the proposed rule then this codification will not take effect, and the State rules that are approved after the EPA considers public comment will be codified instead. By codifying the approved Utah program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally-approved requirements of the Utah program.

The EPA is incorporating by reference the Utah approved UST program in 40 CFR 282.94. Section 282.94(d)(1)(ii)(B) incorporates by reference for enforcement purposes the

State's regulations. Section 282.94 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under subtitle I of RCRA.

D. What is the effect of EPA's codification of the federally authorized State UST Program on enforcement?

The EPA retains the authority under sections 9003(h), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved States. If the EPA determines it will take such actions in Utah, the EPA will rely on federal sanctions, federal inspection authorities, and other federal procedures rather than the state analogs. Therefore, though the EPA has approved the State procedures listed in 40 CFR 282.94(d)(1)(ii), the EPA is not incorporating by reference Utah's procedural and enforcement authorities.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in coverage than the federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are "broader in coverage" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Title 40 CFR

282.94(d)(1)(iii) lists for reference and clarity the Utah statutory and regulatory provisions which are “broader in coverage” than the federal program and which are not, therefore, part of the approved program being codified today. Provisions that are “broader in coverage” cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

This action only applies to Utah’s UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action approves and codifies state requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Utah’s revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely approves and codifies state requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a state's application for approval as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). "Burden" is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing state rules which are at least equivalent to, consistent with, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of Sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, State program approval, and Underground storage tanks.

Dated: _____ October 26, 2018.

Douglas Benevento,
Regional Administrator,
EPA Region 8.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.94 to read as follows:

§ 282.94 Utah State-Administered Program.

(a) *History of the approval of Utah's Program.* The State of Utah is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 et seq. The State's program, as administered by the Utah Department of Environmental Quality (DEQ), Division of Environmental Response and Remediation (DERR), was approved by EPA pursuant to 42 U.S.C. 6991c and Part 281 of this Chapter. EPA published the notice of final determination approving the Utah underground storage tank base program effective on April 7, 1995. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* Utah has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Utah must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with

section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Utah obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the Federal Register.

(d) Utah has final approval for the following elements of its program application originally submitted to EPA and approved effective April 7, 1995, and the program revision application approved by EPA effective on **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations—(i) Incorporation by reference.* The Utah provisions cited in this paragraph, and listed in Appendix A to part 282, are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Utah regulations that are incorporated by reference in this paragraph from Utah's Office of Administrative Rules, Office Coordinator, P.O. Box 141007, Salt Lake City, UT 84114-1007; Phone number: 801-538-3003; Website: <https://rules.utah.gov/publications/utah-adm-code/>. You may inspect all approved material at the EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202 (Phone number (303) 312-6284 or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) Utah Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, October 2018.

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) The statutory provisions include: Utah Code (May 8, 2018), Title 19, "Environmental Quality Code," Chapter 6, "Hazardous Substances," Part 4 "Underground Storage Tank Act": Sections 19-6-402 (14); 19-6-404(2)(f), (j), and (m); 19-6-407(2); 19-6-414; 19-6-416; 19-6-418; 19-6-420(2), (4)(a), (5)(b), (8), and (9)(b); 19-6-424.5; 19-6-425; 19-6-426(5) and (6); 19-6-427, and 19-5-429(1).

(B) The regulatory provisions include:

(1) *Utah Administrative Code (January 1, 2017), Title 311:* "Environmental Quality, Environmental Response and Remediation": Sections R311-206-7(a) and (f); R311-208-1 through R311-208-5.

(2) *Utah Administrative Code (January 1, 2017), Title 305:* "Environmental Quality, Administrative Procedures": Sections R305-7-101 through R305-7-113; R305-7-200 through R305-7-217; R305-7-301 through R305-7-320; R305-7-401 through R305-7-403; R305-7-501 through R305-7-503; and R305-7-601 through R305-7-623.

(iii) *Provisions not incorporated by reference.* The following specifically identified sections and rules applicable to the Utah underground storage tank program that are broader in coverage than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) *Utah Code* (May 8, 2018), *Title 19*: “Environmental Quality Code,” Chapter 6, “Hazardous Substances,” Part 4 “Underground Storage Tank Act”: Sections 19-6-412(6); and 19-6-411(7).

(B) *Utah Administrative Code* (January 1, 2017), *Title 311*: “Environmental Quality, Environmental Response and Remediation”: Sections R311-201-2; R311-201-4; R311-201-5 through 10; R311-203-3(b), (c) and (g); R311-203-4; R311-206-2(a)(1), (b) and (c); and R311-206-8(a)(1) – (4) and (f)(1)(A).

(2) *Statement of legal authority.* The Attorney General’s Statements, signed by the Assistant Attorney General and Director of the Environment and Health Division of the Utah Attorney General’s Office of the State of Utah on October 2, 2017, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on February 28, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on February 28, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the Utah Department of Environmental Quality, signed by the EPA Acting Regional

Administrator on July 27, 2017, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by revising the entry for Utah to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Utah

(a) The statutory provisions include: Utah Code, *Title 19*: “Environmental Quality Code,” Chapter 1, “General Provisions, Part 2, Powers,” (May 8, 1991) and Chapter 6, “Hazardous Substances, Part 4, Underground Storage Tank Act” (May 8, 2018):

Section 19-1-203, Representatives of department authorized to enter regulated premises.

Section 19-6-402, Definitions, except (3), (4), (8), (9), (11), (14), (15), (20), (23) and (26).

Section 19-6-402.5, Retroactive effect.

Section 19-6-403, Powers and duties of board, except (1)(a)(i), (1)(a)(vi) and (1)(a)(vii).

Section 19-6-404, Powers and duties of director, except 2(c), 2(f), 2(j) and 2(m).

Section 19-6-407, Underground storage tank registration – Change of ownership or operation – civil penalty, except (2) and (3).

Section 19-6-413, Tank tightness test – Action required after testing.

Section 19-6-420 Abatement actions – Corrective actions, except (1) through (3)(b), (4)(a), (5)(b) and (c), (6), and 9(b).

(b) Administrative Rules of the State of Utah, Title 311 Environmental Quality, Environmental Response and Remediation, Utah Administrative Code (April 1, 2018):

(1) Section R311-200-1, , Underground Storage Tanks: Definitions, except (b)(2), (b)(5), (b)(6), (b)(7), (b)(10), (b)(11), (b)(12), (b)(13), (b)(20), (b)(22), (b)(28), (b)(34), (b)(38), (b)(44), (b)(45), (b)(49), (b)(51), (b)(55), (b)(56), (b)(58), and (b)(59).

Section R311-201-1, Underground Storage Tanks: Definitions, except those definitions listed as excepted under R311-200-1.

Section R311-201-12, Underground Storage Tanks: Certification Programs and UST Operator Training, UST Operator Training and Registration, except (d)(2) and (f).

Section R311-202-1, Federal Underground Storage Tank Regulations, Incorporation by reference, except (a), (b), (c), and (d).

Section R311-203-1, Underground Storage Tanks: Technical Standards, Definitions, except those definitions listed as excepted under R311-200-1.

Section R311-203-2, Notification.

Section R311-203-3, New installations, permits, except (b), (c), and (g).

Section R311-203-5, UST testing requirements.

Section R311-203-6, Secondary containment and under-dispenser containment.

Section R311-203-7, Operator inspections.

Section R311-203-8, Unattended facilities.

Section R311-204-1, Underground Storage Tanks: Closure and Remediation, Definitions, except those definitions listed as excepted under R311-200-1.

Section R311-204-2, Underground Storage Tank Closure Plan.

Section R311-204-3, Disposal.

Section R311-204-4, Closure notice.

Section R311-205-1, Underground Storage Tanks: Site Assessment Protocol, Definitions, except those definitions listed as excepted under R311-200-1.

Section R311-205-2, Site assessment protocol.

Section R311-206-1, Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms, Definitions, except those definitions listed as excepted under R311-200-1.

Section R311-206-2, Declaration of financial assurance mechanisms, except (a)(1), (b), and (c).

Section R311-206-3, Requirements for issuance of certificates of compliance, except (7) and (8).

Section R311-206-5, Requirements for owners and operators demonstrating financial assurance by other methods, except (b) and (b)(2).

Section R311-206-8, Delivery prohibition, except (a)(1) - (4) and (f)(1)(A).

(c) Copies of the Utah regulations that are incorporated by reference are available from the Utah's Office of Administrative Rules, Office Coordinator, P.O. Box 141007, Salt Lake City, UT 84114-1007; Phone number: 801-538-3003; Website:
<https://rules.utah.gov/publications/utah-adm-code/>.

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[FR Doc. 2018-24062 Filed: 11/2/2018 8:45 am; Publication Date: 11/5/2018]